

promote at affordable rates universal telecommunications services for all Americans. It would be arbitrary and capricious, stand the intent of Congress on its head, and be contrary to sound public policy for the Joint Board or Commission, acting under a law that intends as a primary purpose to protect and promote universal service, to take steps that would increase rates for universal telecommunications services in rural and high-cost areas.

Rates in these areas must be maintained at current levels for all residents. Congress did not -- and did not intend to -- introduce a means test for universal telecommunications services in rural, insular and high-cost areas of the Nation. As set forth in the Senate Report on S. 652, "any action to reduce or eliminate support mechanisms shall only be done in a manner consistent with the obligation to preserve and advance universal service for all Americans." S. Rep. No. 104-23, *supra*, at 26.^{2/}

^{2/} As Senator Dorgan concisely stated:

"A telephone in the smallest city in North Dakota or the smallest town in North Dakota is as important as a telephone in lower Manhattan in New York because one makes the other more valuable."

142 Cong. Rec. S 690 (daily ed. Feb. 1, 1996) (statement of Sen. Dorgan).

Senator Daschle, the Senate Minority Leader, similarly stated:

"[t]he conference report contains essential rural safeguards in the form of universal service provisions that will benefit our rural communities and greatly increase their ability to persevere in the 21st century. . . . In the long run, universal service at high standards nationwide is in the best interests of the entire economy."

Id. at S 709 (statement of Sen. Daschle).

III. THE NEED FOR UNIVERSAL SERVICE SUPPORT

Current levels of universal service support are essential just to maintain existing levels of telecommunications service in rural, insular and high-cost areas. The Alaska Public Utilities Commission ("APUC") has presented data to the Commission showing that even the most basic of telecommunications services are not universally available in Alaska. About 75 percent of all communities in Alaska have telephone penetration rates below 80 percent, with many locations below 50 percent.^{3/} Telephone penetration rates (and service quality) are hampered by extraordinarily difficult topographic and climatologic conditions, sparse population density, and low incomes.^{4/} Residents in many areas of the State have minimal incomes, with 20 percent of families in some areas living below the poverty line.^{5/}

Although Alaska may be unique and the problems facing universal telephone service more difficult, universal service has not been attained today in other parts of the country as well. Recent data released by the Commission show,

^{3/} Comments of the APUC in CC Docket No. 80-286, dated Oct. 9, 1995 ("APUC Comments"), at 2 and Appendix A.

^{4/} See *Final Recommended Decision*, Integration of Rates and Services, CC Docket No. 83-1376, FCC 93J-2, at ¶ 58 (Joint Board, Oct. 29, 1993); *Tentative Recommendation and Order Inviting Comments*, Integration of Rates and Services, CC Docket No. 83-1376, 8 FCC Rcd 3684, 3686 at ¶ 17 (Joint Board, May 17, 1993); *Supplemental Order Inviting Comments*, Integration of Rates and Services, CC Docket No. 83-1376, 4 FCC Rcd 395, 396 at ¶ 7 (Joint Board, Jan. 3, 1989).

^{5/} APUC Comments at 2 & n.4. For example, 26.2 percent of families in the Bethel Census Area and 21.6 percent of the families in the Dillingham Census Area have incomes below the poverty line. *Id.*

for example, that telephone penetration rates are below 90 percent state-wide in Mississippi and New Mexico.^{6/}

Even these levels of telephone subscribership have been attained in significant part only because of various programs the Commission (often with the participation and advice of Federal State Joint Boards) has adopted over the years to promote universal service. Among those programs are the universal service fund and dial equipment minute ("DEM") separations factors. The support these programs provide is essential to making telephone service available and telephone service rates affordable in most of Alaska and, undoubtedly, in other parts of America.

For example, loss of the DEM separations factor would remove cost support for local telephone rates for the majority of Alaskan local telephone companies of between \$10 and \$55 per line per month.^{7/} The twenty Alaskan local telephone companies which receive universal service funds would lose an average of almost \$16 per line per month in cost support if the universal service fund were eliminated; six would lose more than \$25 per line per month.^{8/}

^{6/} FCC, Common Carrier Bureau, Industry Analysis Division, *Telephone Subscribership Data in the United States* at 17 (Feb. 1996). Undoubtedly, if those are the state-wide levels, subscribership must be much lower than those levels in some areas of each state.

^{7/} APUC Comments, at 3 and Appendix B.

^{8/} APUC Comments, at Appendix B. There are twenty companies listed as receiving universal service fund support. Those twenty companies served (as of Dec. 31, 1993) 164,754 local loops and received \$31,606,515 in universal service fund support annually, for an average of \$191.84 annual support per loop. This
(continued...)

Removal of cost support at the levels provided by DEM weighting and the universal service fund would be devastating. The Joint Board and Commission cannot expect telephone subscribership levels -- which are not at acceptable levels now in all areas of Alaska or the rest of the United States -- even to remain at current levels if local telephone rates were to increase in any material manner.

**IV. EXISTING UNIVERSAL SERVICE SUPPORT
MECHANISMS NEED NOT BE ABOLISHED**

The Joint Board and Commission should be cautious about changing existing universal service support programs. These programs need not be abolished and should not be replaced until it is clear that alternative support programs will satisfy Congressional policy objectives, including affordable telephone service rates.

The Notice of Proposed Rulemaking suggests that the Commission must abolish any existing universal service mechanism that is not "explicit" to consumers. See Notice of Proposed Rulemaking at ¶ 64 ("Consistent with the Act's requirement that support mechanisms be explicit, [we] propose to amend our rules to remove the Link Up provisions from our separations rules."). Abolition of existing universal support mechanisms that are implemented through the Commission's cost allocation (separations) rules, including the universal service fund and DEM weighting, however, is not required.

^{8/}(...continued)

amounts to almost \$16 per loop per month. The support runs as high as \$1338 per loop annually for Summit Tel & Tel.

Nothing in the Telecommunications Act itself requires abolition of separations-based universal support mechanisms. Section 254(b)(5) states, as a guiding principle, that "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." Other provisions require that all telecommunications providers contribute to universal service. 47 U.S.C. § 254(d). These provisions do not require that all universal support mechanisms be "explicit". Moreover, section 254(k) of the Act provides the Commission (and the States) "shall establish any necessary cost allocation rules" to ensure that universal services bear no more than a reasonable share of joint and common costs. This section provides authority for separations-based universal service support mechanisms.

The legislative history of the Act indicates that Congress did not intend to require abolition of existing universal support mechanisms. The Senate bill, which was the basis for the universal service sections of the Telecommunications Act, was clear on this point. Section 103(d) provided "Nothing in the amendments made by this Act to the Communications Act of 1934 shall affect the Commission's separations rules for local exchange carriers or interexchange carriers in effect on the date of enactment of this Act." 141 Cong. Rec. S 8570, S 8575 (daily ed. June 16, 1995). There is nothing in the Telecommunications Act itself, the Joint

Explanatory Statement of the Committee of Conference, or the House Bill to the contrary.^{2/}

The State recognizes that the Joint Explanatory Statement of the Committee of Conference states that "To the extent possible, the conferees intend that any support mechanism continued or created under the new section 254 should be explicit, rather than implicit as many support mechanisms are today." (Emphasis added.) This statement, however, reflects the understanding of the conferees that it may not be possible or appropriate to abolish all implicit support mechanisms. This language originated in the Senate Report on S. 652. S. Rep. No. 104-23, *supra*, at 25. That language was preceded by the following statement: "The language of the bill does not presume that any particular existing mechanism for universal service support must be maintained or discontinued" This statement makes it clear that existing separations-based universal service support mechanisms need not be abolished.

^{2/} As Senator Dorgan stated:

"The lack of universal opportunity and universal services is very troublesome. That is why we have a universal service fund. This conference report protects that and does so in a meaningful way."

142 Cong. Rec. S 690 (daily ed. Feb. 1, 1996) (statement of Sen. Dorgan).

Sen. Dominici added:

"This legislation explicitly preserves the universal service fund which subsidizes telephone services to rural areas."

Id. at S 703 (statement of Sen. Dominici).

**V. ADDITIONAL SERVICES SHOULD BE ADDED
TO THE BASKET OF UNIVERSAL SERVICES
FOR RURAL, INSULAR AND HIGH-COST AREAS**

The State agrees with the Commission that the services set forth in paragraph 16 of the Notice should be among the core services receiving universal service support in rural, insular and high cost areas. Those services are: (1) voice grade access to the public switched network, with the ability to place and receive calls; (2) touch-tone; (3) single party service; (4) access to emergency services (911); and (5) access to operator services. With respect to the first listed service, access must be provided to both the local exchange network and an interexchange network, so that both local and interexchange calls may be placed and received.

This list, however, is not complete. Congress again was clear that more was contemplated. Section 254(b)(2) provides that "Access to advanced telecommunications and information services should be provided in all regions of the Nation." Section 254(b)(3) states that "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." Section 706 of the Telecommunications Act requires the Commission to encourage the deployment of advanced telecommunications capability, which it defines as "high-speed, switched, broadband

telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications." Given the universal service policy objective of providing residents of rural areas the same access to advanced telecommunications services available to residents in urban areas, the Joint Board and Commission should implement as quickly as possible this definition of advanced telecommunications capability as it defines universal service.

The five services the Commission proposed be supported do not fully implement the statutory principles. The Joint Board and Commission should take steps to include services that are essential to economic development in the basket of services to be supported. This would include, at a minimum, data transmission and Internet access capabilities which are critical to socioeconomic development in rural areas.^{10/} Additional services to achieve advanced telecommunications capability are essential to schools, libraries and health care providers and should be supported.

Universal services cannot be affordable if they are not available. Congress has, after all, said that universal services should be available to all Americans, including those living in rural, insular, and high cost areas. Thus, universal service support must be provided to upgrade facilities where existing facilities are not adequate to provide universal services. Otherwise, universal services would

^{10/} For example, local dialing access to the Internet and line quality capable of local and interexchange facsimile transmission and data transmission at 28.8 kbps using a modem should be considered universal services.

not be universally available, and indeed, would not be available where they are most needed.^{11/}

One of the fundamental aspects of the universal service provisions of the Telecommunications Act is that rural America should not be left behind as we enter the 21st century. As Senator Stevens, one of the principal drafters of the universal service provisions of the Telecommunications Act, stated:

Now, what we have assured here, as this program goes forward, is that universal service will be available to rural areas. It will be a state-of-the-art telecommunications system. It will mean that the small schools in rural America will have access to modern technology, and can participate through telecommunications. It means that telemedicine will now come to my State.

. . . .

[U]niversal service, eligible telecommunications carriers, and rate integration, opens the whole horizon of telecommunications to the people of this country, and it does so on a fair basis. . . . They mean that rural America will come into the 21st century with everyone else as far as telecommunications is concerned.

142 Cong. Rec. S 692 (daily ed. Feb. 1, 1996) (statement of Sen. Stevens).^{12/}

^{11/} See Comments of the Alaska Public Utilities Commission being filed in this docket for additional information on this point.

^{12/} These comments were echoed by others, including Senators Pressler and Stowe:

"For the small business located in a smaller town, it will mean that a small businessman there will be on an equal footing with the bigger businessman in an urban center in terms of research and the ability to partner."

(continued...)

As Congress has recognized, if rural areas of the Nation are to develop economically in the 21st century, those areas must have access to modern telecommunications.^{13/} Increasingly, commerce and jobs of all kinds require access to modern telecommunications. Telecommunications knock down the social and economic barriers that great distances otherwise erect between Americans living in rural areas and those in urban areas; this is particularly important in the non-contiguous areas of the Nation. The Joint Board and Commission must, therefore, include in the basket of core services to be supported in rural, insular, and high cost areas, certain data transmission services and Internet access services that will permit these areas to pursue economic development activities that will keep them from falling behind so that all Americans can enter the 21st century together.

^{12/}(...continued)

142 Cong. Rec. S 687 (daily ed. Feb. 1, 1996) (statement of Sen. Pressler).

"Everyone in our country must be able to engage in commerce using the tools and technologies necessary to interact with buyers and sellers"

Id. at S 708 (statement of Sen. Stowe).

^{13/} See statement of Minority Leader Daschle at n.2, above.

**VI. LOW INCOME SUPPORT STANDARDS SHOULD
BE ESTABLISHED AT THE STATE LEVEL**

As the Commission's Notice recognizes (at paragraphs 61 and 64), current universal service support programs aimed at low income consumers are implemented by the States and eligibility for those programs is determined by standards developed by each State. Low income support standards should continue to be established at the State level. Both income levels and the cost of living vary from State to State. No single, nation-wide means test can be fair or provide appropriate support to all Americans.

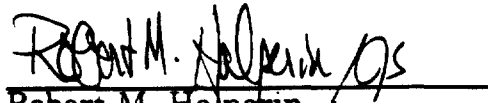
VII. CONCLUSION

The Telecommunications Act creates an opportunity for Americans in rural, insular, and high cost areas to join the rest of the Nation in the Information Age. The Joint Board and Commission should implement the universal service provisions of the Telecommunications Act in a manner that will assure that universal telecommunications services are available at just, reasonable, and affordable rates for all Americans, including those who reside in rural, insular, and high cost areas. Steps that would increase telephone service rates in these

areas would be antithetical to the Telecommunications Act, the intent of Congress,
and sound public policy.

Respectfully submitted,

THE STATE OF ALASKA

A handwritten signature in dark ink, appearing to read "Robert M. Halperin", is written over a horizontal line.

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April 12, 1996

APPENDIX

SENATE FLOOR STATEMENTS ON CONFERENCE COMMITTEE BILL REGARDING UNIVERSAL SERVICE^{1/}

Mr. Pressler:

For the small town hospital, it will mean telemedicine, new devices and investment, where a large hospital can partner with a small hospital in research.

For the small business located in a smaller town, it will mean that a small businessman there will be on an equal footing with a bigger businessman in an urban center in terms of access to research and the ability to partner.

. . . .

Another area that it will help our country is jobs. This is the biggest jobs bill ever to pass this Congress. It will result in a creation of thousands of jobs, good jobs, good-paying jobs across our country. 142 Cong. Rec. S 687.

Mr. Hollings:

The need to protect and advance universal service is one of the fundamental concerns of the conferees in drafting this conference agreement. Universal service must be guaranteed; the world's best telephone system must continue to grow and develop, and we must attempt to ensure the widest availability of telephone service.

The conference agreement retains the provision in the Senate bill that requires all telecommunications carriers to contribute to universal service. A Federal-State joint board will define universal service, and this definition will evolve over time as technologies change so that consumers have access to the best possible services. Special provisions in the legislation address universal service in rural areas to guarantee that harm to universal service is avoided there. *Id.*, at S 688.

^{1/} Source: 142 Cong. Rec. S 687-718 (daily ed. Feb. 1, 1996).

Mr. Dorgan:

The conference report contains a bulk of the key rural provisions that are designed to protect rural areas. One provision will maintain the universal service system which ensures that rural and high cost areas will continue to receive affordable phone services. This issue is of enormous importance to those of us from small States.

We have always felt that way about telephone service. A telephone in the smallest city in North Dakota or the smallest town in North Dakota is as important as a telephone in lower Manhattan in New York because one makes the other more valuable. The lack of universal opportunity and universal communications services is very troublesome. That is why we have a universal service fund. This conference report protects that and does so in a meaningful way. *Id.*, at S 690.

Mr. Stevens:

We have worked many years now to bring us to this day, where we could literally say that we are ready now to take the telecommunications industry of the United States into the 21st century.

In doing so, we have been careful to recognize that there are places in the country that have not been totally served by the existing telephone and information communications system. This bill has extensive universal service concepts. It has specific provisions regarding telecommunications services for health care providers, education providers, education and secondary schools.

. . . .

I come from a State, Mr. President, one-fifth the size of the United States. It is rural in nature. We have a small population. We have people in our State who are just now getting telephone service as known to the rest of the country for the whole century, almost. Now, what we have assured here, as this program goes forward, is that universal service will be available to rural areas. It will be the state-of-the-art telecommunications system. It means that telemedicine will now come to my State.

My State, when I first came here, had no assistance whatever for people in small villages. They had to find their way to Indian hospitals in regional areas. We created a system of clinics. Those clinics are, by and large, operated by young women from the villages who have a high school education and some technical training now. This bill means

telecommunications will bring telemedicine in. They will be able to have a direct exposure of patients to doctors miles and miles away. They will be able to get assistance in dealing with mothers who have complications in pregnancies.

This bill, above all the things I have dealt with - in particular universal service, eligible telecommunications carriers, and rate integration, opens the whole horizon of telecommunications to the people of this country, and it does so on a fair basis. It has been criticized by some, but the universal service provisions that I mentioned when I first started my comments here, I think are the most important to me. They mean that rural America will come into the 21st century with everyone else as far as telecommunications is concerned. *Id.*, at S 691-92.

Mr. Burns:

The report also protects the continuation of universal service, an essential feature, especially for rural areas where competition will be slow to evolve. *Id.*, at S 700.

Mr. Wellstone:

This bill also represents so much for our country. I can imagine workers in rural Minnesota telecommuting to and from work as far away as New York or Washington without ever having to leave their homes or families. As a teacher the possibilities really excite me -- schoolchildren in Minneapolis reading the latest publications at the Library of Congress via thin glowing fiber cables or rural health care providers on the iron range consulting with the top medical researchers at the Mayo Clinic in Rochester to better treat their patients. All of this is before us.

. . . .

The conferees maintained some very important Senate provisions, including language to keep telecommunication rates low for schools and hospitals. This will help to ensure that our communication technologies are affordable for future generations. I was proud to support this provision when opponents tried to strip this provision in the Senate. *Id.*, at S 700.

Mr. Domenici:

The Telecommunications Competition and Deregulation Act of 1996 will provide consumers with more choices and lower prices in long distance phone service and television programming. And it will do so in a way that

protects rural customers: This legislation explicitly preserves the universal service fund which subsidizes telephone services to rural areas. *Id.*, at S 703.

Ms. Snowe:

Mr. President, this conference report will bring unprecedented competition and development to the telecommunications industry. And while competition can bring an array of improved services at a lower cost, we must ensure that competition ultimately achieves that goal for all Americans, in both urban and rural areas.

I am, therefore, particularly pleased that the conference report before us recognizes that strong universal service provisions are a necessary and important part of telecommunications reform.

Residents of rural areas should bear no more cost for essential telecommunications services than residents of densely populated areas. Just as extending basic telephone service and electrification to rural areas rose to the top of our national agenda in the 1930's and 1940's, so telecommunications must be a top priority today. No American citizen should be left out of the communications revolution.

Indeed, the concept of universal service was established in the 1934 Communication Act, to establish widely available basic telephone service at reasonable rates. The rationale for this policy is that telephone service is essential to link Americans together, so that all Americans can communicate with each other on approximately equal footing. It was an important economic development tool, as well.

Everyone in our country must be able to engage in commerce using the tools and technologies necessary to interact with buyers and sellers, and be able to be informed and to inform others of emergency situations and to access emergency services.

. . . .

Unfortunately, there is a widening gap between the high expectations of an increasingly technologically driven society and the inability of most schools -- particularly rural schools -- to prepare students adequately for the high-technology future. Almost 90 percent of kindergarten through 12th grade classrooms lack even basic access to telephone service.

Telecommunications can help us provide a world class education to children across America. If we want young people to actively use the technology of the future so it becomes second nature to them, then we must ensure that schools are part of the national information infrastructure.

. . . .

Rural schools and libraries usually pay more for access to information services than schools and libraries in urban areas because the information service providers do not have access points in local calling regions, meaning that rural schools and libraries must make a long distance telephone call to access the Internet and other information services. It is imperative that access the information superhighway be affordable, because America's schools and public libraries operate on very slim, inflexible budgets.

. . . .

Mr. President, I believe that the Snowe-Rockefeller provision is fundamentally important to assuring that we do not end up with a two tiered telecommunications system in America.

The Snowe-Rockefeller provision is fundamental to assuring that all areas in America have access to the essential telecommunications services of the future. And it is fundamental to ensuring that this legislation provides a solid foundation for the future. *Id.*, at S 708-09

Mr. Daschle:

While the legislation focuses on competition and deregulation, the conference report contains essential rural safeguards in the form of universal service provisions that will benefit our rural communities and greatly increase their ability to preserve in the 21st century.

There is little doubt that our urban areas can and will sustain the enormous expansion of telecommunications services in the years ahead. We must make certain that our rural areas are not left behind as services expand and new products come on line. In the long run, universal service at high standards nationwide is in the best interests of the entire economy.

I believe that telecommunications reform is essential in preserving the economic vitality of rural America and am optimistic that the affordable accessibility to these new telecommunications services will be the harbinger for a new renaissance among the main street economies in communities throughout rural America.

Already, many in my home State of South Dakota are beginning to realize the importance and value of telecommunications services. Many small, rural medical clinics and hospitals are linking together with larger, more urban hospitals via telemedicine to provide their citizens with a higher quality of care. Children in schools that are hundreds of miles from the nearest population center can now have access to the world's greatest libraries at their fingertips. An increasing number of South Dakota agricultural producers are determining weather forecasts and market reports with a simple keystroke. And all across main street South Dakota, small businesses are reducing their overhead via networking services, reducing their paper work through electronic mail, and saving thousands of dollars a year in travel expenses through their use of teleconferencing.

And all of this is just the beginning. As these technologies continue to develop, the playing field for economic development will begin to level. South Dakota is already enjoying the benefits of advanced telecommunications and they can only stand to benefit from further telecommunications reform. *Id.*, at S 709.

Mr. Kerry:

I am also pleased the conference report includes three amendments which I sponsored.

. . . .

The third amendment will make sure that as we build the information highway, the builders do not bypass poor rural or urban communities. When interstate highways were built through cities across our Nation, often times they went directly through poor neighborhoods. Construction of the technology interstate system must not be allowed to detour around children and families in the same or similar areas who already face enormous challenges. My amendment is designed to assure that the telecommunications network will reach every neighborhood, offering access to those who need it most for a decent education, to upgrade their job skills or to connect them to medical help they need. *Id.*, at S 710.

Mr. Harkin:

However, we must also recognize that telecommunications competition is limited in some areas, especially in many rural areas. The high cost of providing telecommunications to rural areas is prohibitive for most telecommunications service providers without some incentive. The

1934 communications bill understood this and adopted a principle called universal service, which was thankfully maintained and updated in S. 652.

....

Without universal service protections, advance telecommunications will blow right by rural America creating a society of information haves and have nots. S.652 recognizes that the definition of universal service is evolving as the technology changes. S. 652 requires the FCC to establish a Federal-State joint board to recommend rules to reform the universal service system. The Joint Board will base its policies on principles which understands that access to quality, advanced telecommunications services should be provided to all Americans at a reasonable cost.

....

The information super-highway must be available and affordable to all Americans through schools and libraries. *Id.*, at S 713.

Mr. Exon:


Mr. President, this legislation also represents a major victory for rural America. The conference report gives approval to the so-called farm-team provisions. These provisions assure that rural citizens enjoy telephone technologies and prices which are comparable to those in urban areas. The provisions also allow rural phone companies to pool resources with each other and with cable companies to share new technologies and to give states the power to prevent unfair cherry-picking competition in rural markets.

....

The provisions also give the Federal and State regulators flexibility in dealing with small and mid-sized phone companies. Too often, one-sized-fits-all regulation needlessly pushes up costs for Nebraska's home town phone companies. *Id.*, at S 718.

CERTIFICATE OF SERVICE

I hereby certify on behalf of The State of Alaska that a true and correct copy of the foregoing "Comments of the State of Alaska" were served by first class U.S. mail, postage prepaid, this 12th day of April, 1996, upon the counsel of record as indicated on the attached service list.


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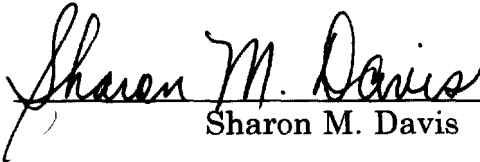
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***By Hand Delivery**

CERTIFICATE OF SERVICE

I hereby certify on behalf of The State of Alaska that a true and correct copy of the foregoing "Reply Comments of the State of Alaska" were served by hand delivery or first-class mail, postage prepaid, this 3rd day of May, 1996, upon the following counsel of record on the attached Service List.


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